

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SHANE SANDOVAL,

Plaintiff,

vs.

No. CV 19-00857 RB/GJF

BERNALILLO COUNTY SHERIFF'S OFFICE,

Defendant.

ORDER OF VOLUNTARY DISMISSAL

This matter comes before the Court on Plaintiff's *pro se* Motion to Dismiss (Doc. 7). Plaintiff moves to dismiss his 42 U.S.C. § 1983 prisoner civil rights action without prejudice. The Court construes the Motion as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i). That rule gives plaintiffs a right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). *See also Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003). This case is still in the screening phase, service has not been effectuated, and Defendant has not filed a responsive pleading. Therefore, the Court will grant the Motion and dismiss this § 1983 action without prejudice.

The Court notes for the record that this is the fourth case Plaintiff has voluntarily dismissed, without explanation, within the past few months. *See Sandoval v. Hartsack*, No. CV 18-00030 MV/CG (Doc. 29); *Sandoval v. Cobb*, No. CV 19-00765 JCH/KK (Doc. 9); *Sandoval v. N.M. Corr. Dep't*, No. CV 19-00969 MV/LF (Doc. 6). Although Rule 41(a) provides a right of voluntary dismissal, Plaintiff may not voluntarily dismiss an action under Rule 41(a) in order to avoid a "strike" under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). The courts have uniformly held that allowing voluntary dismissal to avoid a strike would defeat the purpose of § 1915(g). *See*,

e.g., *Large v. Beckham Cty. District Court*, 558 F. App'x. 827 (10th Cir. 2014); *Grindling v. Hawaii*, Civ. No. 09-00536 JMS/BMK, 2009 WL 4857399, at *1 (D. Hawai'i Dec. 16, 2009); *Sumner v. Tucker*, 9 F. Supp. 2d 641, 644 (E.D. Va. 1998); *Hines v. Graham*, 320 F. Supp. 2d 511, 528 (N.D. Tex. 2004); *Bloodworth v. Timmerman-Cooper*, 2:10-cv-926, 2011 WL 1740031, at *3–4 (S.D. Ohio May 5, 2011). Sandoval is notified that, in the future, the Court may deny voluntary dismissal if it appears that Plaintiff is seeking to avoid Court dismissal of the proceeding as frivolous, malicious, or for failure to state a claim.

IT IS THEREFORE ORDERED that the Motion to Dismiss (Doc. 7) is **granted** and the Court will enter a judgment closing the civil case.


ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE